

Chapter RL 18

TRUST ACCOUNTS

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Note: Chapter REB 9 as it existed on February 28, 1983 was renumbered to be chapter RL 18, effective March 1, 1983.

RL 18.01 Authorization. The following rules are adopted pursuant to ss. 227.11, 452.07 and 452.13, Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.01 and am. Register, February, 1983, No. 326, eff. 3-1-83.

RL 18.02 Definitions. As used in this chapter, unless the context otherwise specifically requires:

(1) "Board" means real estate board.

(2) "Co-brokerage" means an agreement between a broker with whom a seller has signed a listing contract and another broker who has found a buyer for the property to cooperate in the sale of the property and split the commission at any agreed percentage or on some other basis.

(2m) "Depository institution" means a bank, savings and loan association or credit union.

(3) "Real estate trust funds" means:

(a) Cash, checks, share drafts, drafts or notes received by a broker or a broker's salesperson on behalf of a principal or any other person while performing as a licensed real estate broker or salesperson, including:

1. Payments on land contracts, mortgage payments and any other receipts pertaining to mortgages,
2. Tax and insurance payments held in escrow,
3. Advance fees and finder's fees.
4. Rental application deposits and rents.
5. Security deposits on rental property.

(b) Initial and additional earnest money downpayments and other monies received in connection with offers to purchase, options, and exchanges, even if the real estate or business opportunity is owned wholly or in part by the licensee.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; r. and recr. (3), Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.02 and am. (1), Register, February, 1983, No. 326, eff. 3-1-83; cr. (2m), am. (3) (a) (intro.), renum. (3) (c) and (d) to be (3) (a) 4. and 5. and am. 5., Register, June, 1984, No. 342, eff. 7-1-84.

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RL 18.03 General requirements. (1) TRUST ACCOUNT DEPOSITS. (a) A broker shall deposit all real estate trust funds received by the broker or the broker's salespersons in one or more accounts with a maturity of no more than 31 days in one or more depository institutions located in and authorized to do business in Wisconsin. An account with a savings and loan association does not have a maturity of more than 31 days solely because the account is subject to s. 215.17 (4) to (6), Stats., or 12 USC 1464 (b) (1) (c) and (d).

(am) Real estate trust funds may be deposited in an interest-bearing account if the broker obtains from the persons for whom the funds are held written authorization to deposit the funds in an interest-bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on funds deposited into an interest-bearing account by a real estate broker may inure to the benefit of the broker, except that a mortgage banker which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year and may retain for its own account any additional interest earned, unless the escrow funds are held by a third party in a non interest-bearing account.

(b) A broker shall deposit all real estate trust funds received by the broker or the broker's salespersons in a real estate trust account within 24 hours of receipt of such trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the broker shall deposit the funds on the next business day of the depository institution. A broker may satisfy this requirement by depositing trust funds received by the broker in the mail, postage prepaid and addressed to the depository institution where the broker's account is maintained.

(c) A salesperson who receives real estate trust funds shall promptly submit the funds to the salesperson's employer-broker.

(d) A licensee having an ownership interest or any other kind of interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners.

(2) NUMBER OF REAL ESTATE TRUST ACCOUNTS. A broker may maintain more than one real estate trust account, if the broker notifies the department of these accounts, as required in sub. (5) of this section.

(3) TIME WHEN REAL ESTATE TRUST ACCOUNT SHALL BE OPENED OR MAY BE CLOSED. (a) A broker shall be required to open one or more real estate trust accounts only when real estate trust funds come into the broker's possession.

(b) A broker may close any real estate trust accounts when no real estate trust funds remain in the broker's possession.

(4) ACCOUNT DESIGNATION. (a) A broker shall include the words "trust account" in the name of all real estate trust accounts maintained by the broker.

(b) A broker shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

(c) A broker shall name the broker's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. RL 23.03.

(5) DUTY TO NOTIFY THE DEPARTMENT. (a) A broker shall provide the department with the name and number of every real estate trust account maintained by the broker and the name of the depository institution in which the broker holds each real estate trust account.

(b) A broker shall notify the department whenever a broker changes a real estate trust account name or number, changes the method of doing business as required in s. RL 23.02, changes the real estate trust account from one depository institution to another or closes a real estate trust account.

(6) AUTHORIZATION TO EXAMINE REAL ESTATE TRUST ACCOUNTS AND RECORDS. (a) A broker shall authorize representatives of the department to examine and audit all the broker's real estate trust account records.

(b) A broker shall obtain the certification of every depository institution in which a broker maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department.

(7) TIME AND FORM FOR NOTIFICATION AND AUTHORIZATION. (a) A broker shall provide information and authorization in subs. (5) and (6) no later than 10 days after opening or closing any real estate trust account or no later than 10 days after any change as required in sub. (5) (b), and at the time of each renewal of license.

(b) A broker shall provide the information and authorization in subs. (5) and (6) on a form provided by the department. This form shall be designated, "consent to examine and audit trust account." However, when closing a real estate trust account, a broker may inform the board by letter only.

Note: A free copy of this form may be obtained from the Department of Regulation and Licensing, Real Estate Bureau, 1400 East Washington Avenue, Madison, Wisconsin 53702.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.03 and am. (2), (4) (c), (5), (6) and (7) (b), Register, February, 1983, No. 326, eff. 3-1-83; am. (1) (a), (b), (4) (b) and (c), (5) (a) and (b) and (6) (b), cr. (1) (am), (c) and (d), r. (4), (d), Register, June, 1984, No. 342, eff. 7-1-84.

RL 18.04 Authorization to sign trust account checks. (1) APPLICATION FOR AUTHORIZATION. A broker may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker's real estate trust account, provided the broker has filed an application for this authority with the department and the department approves the application in writing.

Note: A free copy of this authorization form may be obtained from the Department of Regulation and Licensing, Real Estate Bureau, 1400 East Washington Avenue, Madison, Wisconsin 53702.

(2) AUTHORIZATION OF OFFICERS AND PARTNERS. (a) Licensed officers of a corporation and licensed partners in a partnership shall not be required to submit an application to the department and obtain department approval to sign real estate trust account checks, share drafts or drafts drawn on their corporate or partnership trust account.

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(b) The department shall not authorize an inactive partner or an unlicensed officer of a corporation to sign corporate or partnership real estate trust account checks, share drafts or drafts unless the partner owns less than a controlling interest in the partnership or the officer is a minority stockholder in the corporation.

(3) **MINIMUM QUALIFICATIONS.** Minimum qualifications for persons other than licensed officers and licensed partners to be authorized to sign a broker's real estate trust account checks, share drafts or drafts are the following:

(a) The person shall be an employe of the broker and working in the broker's office, except as provided in sub. (4).

(b) The person shall be a resident of the state of Wisconsin and currently reside in the state of Wisconsin.

(c) The person shall be at least 18 years of age.

(4) **AUTHORIZATION OF BROKER'S ATTORNEY OR ACCOUNTANT.** The department may authorize an attorney licensed to practice law in Wisconsin or a certified public accountant to sign checks, share drafts or drafts drawn on a broker's real estate trust account, if the attorney or accountant is retained by the broker.

(5) **WAIVER OF REQUIREMENTS.** With the exception of sub. (3) (b), the department may, upon written request and evidence of extenuating circumstances, waive portions of this section.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.04 and am. (1), (2), (4) and (5), Register, February, 1983, No. 326, eff. 3-1-83; am. (1), (2), (3) (intro.) and (4), Register, June, 1984, No. 342, eff. 7-1-84.

RL 18.05 Receipt for earnest money received. A broker and a broker's licensed salespersons shall indicate on the offer to purchase the receipt of initial earnest money received by them from a buyer.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.05, Register, February, 1983, No. 326, eff. 3-1-83.

RL 18.06 Escrow agreement for earnest money. If the parties to a transaction do not desire that the broker hold the earnest money in the broker's real estate trust account, and wish to agree to some type of escrow arrangement other than that provided for in the offer to purchase with respect to earnest money deposits, the escrow agreement shall not be drafted by the broker. The escrow agreement shall be drafted by the parties or an attorney. The broker shall not hold the funds in the broker's real estate trust account, nor shall the broker act in any way as custodian of the funds for the parties. The funds, pursuant to the escrow agreement, shall be held by some other party, such as a bank, a savings and loan association, a credit union or an attorney.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.06, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, June, 1984, No. 342, eff. 7-1-84.

RL 18.07 After closing escrow agreements. (1) Except as provided in sub. (2), if the parties to a contract wish, or are required, to place funds in escrow until some future occurrence, and they request that the broker hold these funds, an agreement to that effect shall be prepared by the parties or an attorney. If the broker holds these funds, the broker shall place them in the broker's real estate trust account.

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(2) A broker may hold in a trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed provided that the closing statement shows that the broker is holding the funds.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; am., Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.07, Register, February, 1983, No. 326, eff. 3-1-83; renum. to be (1) and am., cr. (2), Register, June, 1984, No. 342, eff. 7-1-84.

RL 18.08 Downpayments and co-brokerage. (1) CASH DOWNPAYMENTS. If an offer to purchase is the result of co-brokerage, the selling broker shall transfer the earnest money payment received in the form of cash from the buyer to the listing broker within 24 hours of acceptance of the offer to purchase.

(2) **DOWNPAYMENTS BY CHECK, SHARE DRAFT OR DRAFT.** The selling broker shall transfer to the listing broker the earnest money payment received in the form of a personal check, share draft or draft within 24 hours of acceptance of the offer to purchase, except that the selling broker may withhold transfer of the payment pending clearance from the payor's depository institution. If the check, share draft or draft clears, the broker shall transfer the earnest money to the listing broker within 24 hours of receiving evidence of clearance.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; am., Register, April, 1982, No. 316, eff. 5-1-82; renum. from REB 9.08, Register, February, 1983, No. 326, eff. 3-1-83; renum. to be (1) and am., cr. (2), Register, June, 1984, No. 342, eff. 7-1-84.

RL 18.09 Disbursement of trust funds. (1) WITHDRAWAL OF COMMISSIONS. A broker shall withdraw commissions or fees earned by the broker from real estate trust accounts maintained by the broker within 24 hours after transactions are consummated or terminated, or after the commissions or fees are earned in accordance with the contract involved.

(2) **IMPROPER DISBURSEMENT.** A broker shall not disburse trust funds from his or her real estate trust account contrary to the terms of a contract for the sale, lease, exchange, or option on real estate or a business opportunity.

(3) **PROPER DISBURSEMENT.** A broker who disburses trust funds from his or her real estate trust account under the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(a) Upon the rejection of an offer to purchase, lease, exchange, or option on real estate or a business opportunity;

(b) Upon the withdrawal prior to acceptance of an offer to purchase, a lease, an exchange or an option on real estate or a business opportunity;

(c) Upon the closing of the transaction;

(d) Upon authorization granted within the contract;

(e) Upon securing a written agreement which is signed by all parties having an interest in the trust funds;

(f) Upon depositing the trust funds into a court having jurisdiction over a civil action involving all parties having an interest in the trust funds;

(g) Upon order of a court; or

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(h) Upon a good faith decision based on advice of an attorney not representing any party to the contract.

(4) **NOTIFICATION OF DISBURSEMENT.** When a broker decides to make a disbursement of trust funds to which all parties to the contract do not agree, as in sub. (3) (b), (d) and (h), the broker shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement in disputed cases may not occur until 30 days after the date of the notice to the parties.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.09 and am. (3) (intro.), Register, February, 1983, No. 326, eff. 3-1-83; am. (2), (3) (a) and (b) and (4), Register, June, 1984, No. 342, eff. 7-1-84.

RL 18.10 Commingling prohibited. A broker shall deposit only real estate trust funds in the broker's real estate trust account and shall not commingle the broker's personal funds or other funds in the trust account, except that a broker may deposit and keep a sum not to exceed \$100.00 from the broker's personal funds in any real estate trust account, which sum shall be specifically identified and deposited to cover service charges relating to the trust account.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.10, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, July, 1984, No. 342, eff. 7-1-84.

RL 18.11 Deposits in lieu of cash. (1) NON-DEPOSITABLE DOWNPAYMENTS. With the exception of promissory notes, a broker shall not hold as down payment from a buyer any instrument, equity or thing of value which is not depositable in a real estate trust account. Non-depositable items other than promissory notes shall be held by one of the parties to the transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

(2) **PROMISSORY NOTES.** A broker may accept promissory notes from buyers as downpayments, and hold these for the parties to the transaction, if the broker inserts language in the offer to purchase which expressly gives the broker authority to hold the note and if the broker modifies the earnest money clause and the earnest money receipt in the offer to purchase to show receipt of a promissory note.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.11, Register, February, 1983, No. 326, eff. 3-1-83.

RL 18.12 Branch office trust account. In the event a branch office, as defined in s. RL 19.01, maintains one or more real estate trust accounts, separate from any trust account at the broker's main office, a separate bookkeeping system shall be maintained in that branch office.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.12 and am. Register, February, 1983, No. 326, eff. 3-1-83.

RL 18.13 Bookkeeping system. Each broker shall maintain and be responsible for a bookkeeping system in the broker's office consisting of at least the following:

(1) **CASH JOURNAL.** A broker shall maintain a permanent record book, called a journal, which shall show the chronological sequence in which real estate trust funds are received and disbursed:

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(a) For funds received, the journal shall include the date, the name of the party who is giving the money, the name of the principal, and the amount.

(b) For disbursements, the journal shall include the date, the payee, the number of the check, share draft or draft and the amount. The journal shall identify each transaction by including the name of the principal, an identification number or other means of identification.

(c) The journal shall show a running balance for each day on which receipts or disbursements are entered.

(2) LEDGER. A broker shall maintain a record book which shows the receipts and the disbursements as they affect each particular transaction e.g., transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of both parties to a transaction, the dates and the amounts received. The ledger entry shall include the date, payee, number of the check, share draft or draft and amount when funds are disbursed. The ledger shall show a running balance and segregate each transaction. The broker shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, e.g., sales, rental collections or mortgage and land contract collections.

(3) ACCOUNT RECONCILIATION. The broker or a person designated by the broker shall reconcile the real estate trust account in writing each month except in the case where there has been no activity during the month. The written reconciliation shall include the ending account statement balance, the date and amounts of the deposits in transit, the number of the check, share draft or draft and amount of checks, share drafts or drafts written but not paid by the depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance.

(4) OPEN LEDGER ACCOUNT LISTING (TRIAL BALANCE). The broker shall prepare or have prepared, in conjunction with sub. (3), a written listing, "trial balance", of all open items in the real estate trust account. The list must show the names of the parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The broker may in lieu of the names of the parties to the transaction substitute the ledger page number on which the funds appear.

(5) VALIDATION. The broker or a person designated by the broker shall review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.13, Register, February, 1983, No. 326, eff. 3-1-83; am. (intro.), (1) (b), (2) to (5), Register, June, 1984, No. 342, eff. 7-1-84.

RL 18.14 Violation of rules. A broker who fails to comply with the rules in this chapter shall be considered to have demonstrated incompetency to act as a real estate broker in a manner as to safeguard the interests of the public, as specified in s. 452.14 (3), Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. from REB 9.14 and am. Register, February, 1983, No. 326, eff. 3-1-83; am. Register, June, 1984, No. 342, eff. 7-1-84.

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